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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,103	02/05/2002	Dan E. Fischer	7678.569	5744
22913	7590	02/17/2004	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			WILSON, JOHN J	
			ART UNIT	PAPER NUMBER
			3732	17

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,103

Applicant(s)

FISCHER ET AL.

Examiner

John J. Wilson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-21 and 29-31 is/are allowed.
- 6) ☒ Claim(s) 1-18, 22-28 and 40-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule.17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470). Eibofner shows an elongate device for curing light having a body having a tapered proximal end as shown and a light source 2 at the distal end. The shown structure is inherently capable of functioning to facilitate insertion in a holding slot. The shown shape and size of Eibofner is capable of functioning as claimed depending on the shape, size and angle of the inferentially claimed holding slot that it is intended to be used with. As such, the claimed structure is met in that it is an obvious matter of choice to the skilled artisan in the inferentially claimed slot that it is intended to be used with. As to claim 3, see column 3, line 19. The size and shape of the Eibofner device with respect to other inferentially claimed hand pieces is an obvious matter of choice in hand pieces used to the skilled artisan.

Claims 2 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470) in view of Kennedy et al (5634711). Eibofner shows the structure as described above, however, does not show the use of an LED. Kennedy teaches using a LED 22. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of an LED as shown by Kennedy in order to make use of

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known light sources to deliver the desired light to the work area. As to claim 9, Eibofner does not show the use of an lens. Kennedy teaches using a lens 136, Fig. 7, column 4, lines 35-42. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of a lens as shown by Kennedy in order to better focus the light on the desired area. As to claim 10, see filter 7 of Eibofner. As to claim 12, Eibofner does not show the use of a heat sink. Kennedy teaches using a heat sink 26. It would be obvious to one of ordinary skill in the art to modify Eibofner to include the use of a heat sink as shown by Kennedy in order to cool the light source.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470) in view of Sullivan (5975895). Eibofner shows the structure as described above, however, does not show controls for activating the light source for a duration of time and for altering the time. Sullivan shows a control 28 that activates a timer and includes a control for altering the timer, column 6, lines 66 and 67, and column 7, lines 1-12. It would be further obvious to modify Eibofner to include controls as shown by Sullivan in order to better deliver the desired amount of light to the work site.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eibofner et al (5912470) in view of Kennedy et al (5634711) as applied to claim 12 above, and further in view of Verderber (5457611). While Kennedy shows a heat sink 26, the above combination does not show the type of material used for the heat sink.

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Verderber teaches using aluminum for a heat sink 30, column 3, lines 29-35. It would be further obvious to one of ordinary skill in the art to modify the above combination to include using an aluminum heat sink as shown by Verderber in order to make use of known materials to better dissipate heat.

Claims 15-18 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (5013240) in view of Kennedy et al (5634711). Bailey shows a light curing device 30 having a body as suggested that is sized to be received in a holding tray at 83 that also receives other dental instruments as shown. Bailey does not show a light source at the distal end or a power cord extending from the proximal end. Kennedy shows a light source 22 at the distal end and a power cord 20 at the proximal end. It would be obvious to one of ordinary skill in the art to modify Bailey to include a light source and power cord located as shown by Kennedy in order to make use of art known ways of locating known elements to better deliver light to the work site. The shown combination can inherently be inserted and rotated within the mouth of a patient. As to claim 18, see lens 136 of Kennedy. As to claims 25-27, the size and shape with respect to other inferentially claimed hand pieces is an obvious matter of choice in hand pieces used to the skilled artisan. As to claim 28, Kennedy teaches using a heat sink 26.

Claims 40-42, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osterwalder et al (6102696) in view of Kennedy et al (5634711).

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Osterwalder shows an elongate body 10 having LEDs 32 that extend laterally from the body and a window 24 to pass light. Osterwalder does not show a heat sink or a lens. Kennedy teaches using a heat sink 26 and a lens 136. It would be obvious to one of ordinary skill in the art to modify Osterwalder to include a heat sink and lens as shown by Kennedy in order to cool the device and to focus the light to the desired location.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osterwalder et al (6102696) in view of Kennedy et al (5634711) as applied to claim 40 above, and further in view of Bailey et al (5013240). The above combination does not show a holding tray for the device. Bailey teaches a holding tray 83 for a light device 30. It would be obvious to one of ordinary skill in the art to modify the above combination to include a housing tray as shown by Bailey in order to support the device when not in use.

Allowable Subject Matter

Claims 19-21 and 29-31 are allowed.

Remarks

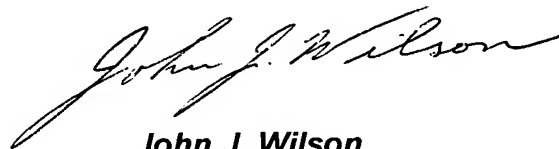
Applicant's response filed January 9, 2004 has been carefully considered, however, is not persuasive. Eibofner is top heavy depending on the holder it is intended to be used with. Bailey is used to teach using a holder, that Bailey lacks a light source in the body is merely arguing the individual reference and not the combination. The

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combination is suggested for the reason given in the above rejection. The use of a light in the body and a power cord would not deprive any reference of the ability to provide light because Bailey is being used to show a holder for dental implements and is not being used to teach how to produce light in a hand piece. While Kennedy does not show some elements and Osterwalder does not show some of the elements, the applied combination properly and obviously teaches the claimed elements.

Conclusion

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



**John J. Wilson
Primary Examiner
Art Unit 3732**

jjw

February 13, 2004

Fax (703) 308-2708

Work Schedule: Monday through Friday, Flex Time